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BEFORE
UNITED STATES HOUSE OF REPRESENTATIVES
COMMITTEE ON ENERGY COMMERCE, SCIENCE AND TRANSPORTATION
SUBCOMMITTEE ON TELECOMMUNICATIONS AND THE INTERNET

**THE COMMUNICATIONS OPPORTUNITY,
PROMOTION AND ENHANCEMENT ACT OF 2006**

Testimony of

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WASHINGTON, D.C.

Good morning, my name is Anthony Riddle, Executive Director of the Alliance for Community Media. The Alliance represents over 3,000 Public, Educational, and Government (PEG) Access centers across the country. On behalf of our members, and millions of community television producers and viewers, we thank Chairman Upton and the members of this subcommittee for inviting the Alliance to speak with you today on this important topic.

Before getting to the substance of our remarks, we want to express our appreciation to this subcommittee and staff for their genuine attention and consideration of our views. Candidly, there were many in our organization who expressed serious doubts that our voices would be heard in this debate. However, I can assure our members and advocates that we were treated with respect, and that HR_____ reflects a sincere effort to address our key issues.

Now, for the rest of the story. Alliance members are localism in action. We are tied to two communities: Civic and corporate. We are 3000 channels, the 250,000 organizations, the 1.2 million volunteers that use those channels every year. We are the local election debate. We are participants in local budget processes. We are the town council meeting, the land-use hearing. We are the tens of thousands of religious organizations which find their only outlet on PEG channels—represented by these hundreds of letters of support here in my hand.

We are you—the tremendous number of Members of Congress who have used the PEG channels to speak directly to your constituents. We love being a part of that process of community, no matter how difficult it may sometimes be. This civic process that roots us into the places we call home.

We are equally bound to the visionary pioneers of science and industry who have created a bridgework of light, sound, data and dreams they can connect communities of like-spirited people--unbound by geographic limitations. As we are partners in the noisy politics of budget and

community, so are we also bound to the economic successes of giant corporations who vie to deliver our dreams and to the freedom of millions of small innovators who blaze a trail to the future.

Imagine the wonder of our ancestors had they witnessed the unlimited potential for democratic media before us now.

The Alliance recognizes the hard work that has brought us to this point. Much is at stake and there are many stakeholders. The current legislative proposal has evolved from countless conversations among many parties. There is much to be thankful for in the current draft. We find ourselves presented with opportunities for further conversation.

Interconnection

The Alliance rates the language on interconnection as excellent. Without such language, many PEG centers would see their funding quickly dissipate as they would have to pay the additional expense of connecting to new providers. Some would be left to choose which provider to connect with and which not. We are also pleased that a mechanism is provided for cost saving arrangements between providers that do not hurt the PEG facilities.

Marketing and Promotion

The Alliance very much appreciates the attention being given to comparability of listings, identifications and accessibility for PEG programming. Diverse local communities find their own voices through access to media. As unique reflections of diverse communities, PEG access TV channels must be easily located and accessed by viewers. Channels should not be moved without the permission of the PEG entity. Local channels should be on the same numerical locations between operators in the same franchise area.

PEG Support

We are pleased to see that there is funding for PEG based on gross revenues. This ties PEG funding to the market forces that drive pricing and subscribership. It also eliminates the need for future adjustment of PEG support. The franchise provision which allow for this are usually the result of a process that included a community-wide public needs assessment and numerous public meetings involving hundreds of citizens. The resulting franchise is then supported by the local government, the cable company, the public schools and many of community's major civic organizations.

- Such an engaging political process ought to be supported by grandfathering of the agreements derived from them.

One percent PEG support above the franchise fee is a strong step in the right direction. It will leave many but, unfortunately, not all of our members whole. Where there would difficulty is in the smaller towns and rural areas or other community that have opted to devote more resources to PEG. There is a level of funding below which the doors just don't open. For this reason, the Alliance has prepared a sliding-scale National Standard for funding large and small communities.

PEG support would be paid to the municipality on an inverse basis according to gross revenues. Smaller communities generally need fewer absolute dollars to operate PEG, but those amounts will constitute a slightly larger percentage of gross revenue. Conversely, larger communities need more PEG support—but less as a percentage of gross revenue. Finally, we would like to see that funding freed, so that communities can determine locally what mix of capital and operating expenditures best meets local needs.

- The attached National Standard sliding scales distribute resources according to local community needs.
- Conforming language on funding is attached to these comments.

Franchise Fee Revenue Base Should Not Be Reduced A reduced franchise fee revenue base would reduce LFA financial support for PEG. The Alliance supports the recommendations of Mayor Fellman and the local government organizations on this matter.

PEG CHANNEL CAPACITY

We think it is a good idea that new video competitors match the existing number of PEG channels in most cases. It saves negotiation time and offers a level playing field. There are a number of adjustments we would suggest.

Communities Without PEG Capacity The bill contemplates communities without cable operators being able to establish PEG with national franchisees by pursuant to rule-making by the FCC. This is a good idea. We would go further and suggest that the FCC rule-making establish a minimum to be followed also in those communities that do have a cable operator but which do not now have PEG channels. This is sometimes the case in smaller communities that did not have the expertise or wherewithal to negotiate for them under older franchises. We can pump oxygen into these needy communities! No one wants to see innovation, development or democracy permanently stifled in underserved areas—often rural and smaller cities and towns with few other media resources.

The relative per subscriber amount of financial support needed to operate PEG *decreases* as the system size increases. However, the amount of bandwidth necessary to serve community needs *increases* with the number of subscribers:

- A system of 10,000 subscribers may be served adequately with two or three PEG channels out of 72 analog channels, or about 4%.
- In Manhattan/New York City with 500,000+ subscribers, community needs are barely met with nine analog PEG channels of a 72 channel system at the time of franchise.

Our suggested National Standard for PEG channel capacity for uses a bell-curve in which the vast majority of systems would have four PEG channels. The needs of both smaller and larger communities are met by balanced, market-based tests.

- We ask Congress to either adopt such standards or, ask that the FCC consider the Alliance's National Standard sliding-scale in any proposed rule-making on PEG channel capacity.

IPTV AS CABLE SERVICE

The Alliance feels that we must be crystal clear that so called "IPTV" type services are subject to the terms of the national franchising model and that there is no "escape hatch" for new entrants to exercise. In particular, we would be greatly concerned if this question were left open to interpretation by the Federal Communications Commission. Without this assurance, we feel new entrants would take advantage of this loophole and render the balance of HR____ essentially meaningless. From our perspective, this is a fundamental requirement for a balanced and equitable bill.

A Word On Percentages Any channel capacity system needs protection from migration of video services to the information services silo. As technology moves forward, there will be market pressure to satisfy PEG requirements with fewer bandwidth resources by not passing along the advantages of innovation. This is often already the case. The number of PEG channels generally remains fixed at old levels even as digital technology provides ten times as many channels in the same space. The digital channels often involve new capabilities for commercial programmers not offered to community programmers.

Fixing PEG at a reasonable percentage of bandwidth based on current channel allotments eliminates this tendency and prevents PEG capacity from being *redefined* out of existence. More importantly, it eliminates regulatory language that might arbitrarily favor one use of technology over another.

- *The use of bandwidth percentages allows a community to align itself with the most current, innovative technology a new system provides while **eliminating the need to ever redefine public interest capacity** obligations. Within this framework, communities will be able to evolve resources that are comparable in basic function and accessibility to those of other system users for years to come.*

Will the Internet Replace Television?

We do not believe that the internet and television are in opposition. They are different forms of delivery of different, similar or identical content. Ultimately, there must still be a provider of the programming and, in the case of PEG, a community process by which that programming is developed. Further, each programmer becomes associated with a particular type of programming—which is how the public knows where to look and what to expect. CNN is a programmer which uses “channels”, radio, internet streaming, newspaper articles, Podcasts and other means of reaching the

audience—all according to which is most appropriate at the time and place. PEG communities should be expected to do the same.

In reality, accessibility is still a major issue governing which communities can use which forms today. According to Craig Moffet of Bernstein Research as part of his testimony at the

Senate Commerce Committee on net Neutrality: "Despite a great deal of arm waving from "visionaries", our telecommunications infrastructure is woefully unprepared for widespread delivery of advanced services, especially video, over the Internet. Downloading a single half hour TV show on the web consumes more bandwidth than does receiving 200 emails a day for a full year. Downloading a single high definition movie consumes more bandwidth than does the downloading of 35,000 web pages: it's the equivalent of downloading 2,300 songs over Apple's iTunes web site. Today's networks simply aren't scaled for that.."

And they won't be for some time to come. Virtual communities served by the Internet cannot replace real communities served by local channels.

Network Neutrality

Recently, we were given a demonstration of a newly designed cable system for video delivery. Its system of delivery is via the internet. The signal to the home is via twisted pair in some areas. More importantly, the signal from PEG to the provider is across the internet via T-1 line. Our channel signal to the video provider is to be carried across the open internet.

What does this have to do with network neutrality? When your community channel is on the information superhighway with all the other voice, data and video signals, the community channels will be lined up at a toll-booth while the Disney Channel is waved through at high speed. This will

leave smaller providers—PEG channels, the public at large and the small, innovative companies who have really made the internet what it is—with grainy picture, undependable or slow delivery and virtual invisibility.

With so little funding for equipment, staff or production, our member PEG stations across the country have done an admirable job serving the community. The one thing that has never been an issue is signal carriage. In theory, all PEG channels had to be carried on an equal basis with commercial channels. One could not buy special status. One could not pay to have another's channel dimmed. Channels, on the most basic level, had to rise or fall on the content of their own character. They should not have to rise or fall according to the content of the community's bank account.

Citizenship and Access to Broadband Communications

The Alliance has an interest in inclusion of stronger language on build-out, redlining or other such non-discriminatory provisions, however they are termed. Any new legislation should anticipate inevitable market imbalances and should have tests for identifying those imbalances. Legislation should provide concrete methods to bring comparability of price and service to all communities. PEG is dialogue, not a monologue. PEG is devalued by the absence of any community at the table. To the degree that PEG represents a democratic process, the absence of any segment of our society is a critical problem, the solution to which is one of the primary responsibilities of good government.

Municipal Communications Systems

The Alliance appreciates that the committee created a reasonable standard for municipal communications systems. Private investors are reasonably protected. The potential of municipal entry can be a positive market force, particularly in those areas that, for whatever reason, have

inadequate competition. Municipal entry also provides an opportunity for remedy in areas where there is inadequate service or perceived lower profitability.

Transition Time Needed

At the time of enactment of the Texas franchising legislation, the local cable company was in renegotiation with San Antonio. When the existing franchise expired, the cable company broke off franchise renewal negotiations, applied for and received a state-wide franchise. They announced with little warning that they would no longer provide the studio, staffing or other in-kind support for Public Access that had been required under the local franchise, but which was not required under the new state-wide franchise. This had the immediate result of diminishing the resources of the people who owned the Public Rights of Way. However, the effects of this state-wide franchise, unintended by the statute's authors, went much further. In the few days between the announcement of the change and its implementation by the cable company, the City was unable to acquire equipment, allocate funding and put the equipment in place. The channel went dark. The cable company then invoked fallow time provisions which allowed them to take the channel back for their own programming use. The City of San Antonio and its citizens are forced to patch together enough production resources to program the minimum number of hours required under the state franchise law just to regain the channel they had operated for years.

The law was intended to keep existing PEG resources whole. It was intended to allow those without PEG resources a reasonable process to secure them. Its very first implementation led to a loss of existing resources, both financial and channel capacity.

The law must provide a transition mechanism to prevent unintentional loss of PEG services.

State and Federal Laws

We would like to see clear language that Federal PEG minimums supersede state and local laws or ordinances that would not allow these minimums to be achieved. In this way, we can avoid a bidding war between states in which the broader public interest is traded out for higher placement on a provider's service roll-out calendar.

Conclusion

The Alliance for Community Media recognizes the hard work that has brought us to this point. We want to see competition and innovation. We want to see greater access for our children to the tools which will do much to determine what their potentials are as human beings. We reaffirm our relationship to you, the Congress which, in great foresight, protected the public interest in this great new communications system. We reaffirm our permanent relationship with the big cities and the small towns in which we live and to the governments which we, as free people, have chosen to represent our interests.

We hope that you will continue this conversation with us as we, together, design, not a television system, but a brave new world. We welcome your questions and comments



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Alliance for Community Media Position Paper: A Simplified Approach to PEG Support in a Competitive Environment

The Alliance believes that competition and community are not contradictory. The community benefits from access to an innovative and competitive system. While we want competitors to enter the market quickly, we are interested in making sure that the community resources provided in exchange for use of the PROW are protected long-term and that they continue to support the development of local culture and services.

While we believe that local negotiations remain the best way to both achieve long-term stability and encourage local character, we have developed a simplified approach to national Public, Educational and Government television funding and capacity.

Three core ideas are at the basis of this narrowly focused discussion:

- **Standardized PEG Funding.**
- **Standardized PEG Channel Capacity.**
- **Federal Minimums Supersede State Laws.**

Our purpose is to propose a structure to secure PEG resources *if* local negotiation is eliminated. Federal standards can be established which recognize the differences between community needs based on size, resulting in the following benefits:

- Video Providers can plan on clear, fixed cost structures.
- Cities can customize community development based upon predetermined resources.
- The cost, time and uncertainty of negotiation are eliminated.
- Both channel capacity and PEG support are determined by the market elements of revenue and subscriber base.

Scalability of Fees

PEG support above 5% is paid to the municipality on an inverse basis according to gross revenues. This support is above 5% and may be used in support of PEG capital or operating expenses. It can be used for capital improvements or operating expenses.

Smaller communities generally need fewer absolute dollars to operate PEG, but those amounts will constitute a slightly larger percentage of gross revenue. Conversely, larger communities need more PEG support—but less as a percentage of gross revenue. The following sliding scales distribute resources according to the assumed community needs.

PEG Support Based on Cable System's Annual Gross Revenues ("GR"):

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- 4% per \$ under \$5,000,000 GR; plus...
 - 3% per \$ between \$5,000,000 - \$10,000,000 GR; plus...
 - 2% per \$ between \$10,000,000 - \$50,000,000 GR; plus...
 - 1% per \$ over \$50,000,000 GR
-

The formula uses a stair-step approach similar to tax tables, so that a 4% PEG funding figure is used for any cable system's first \$5M in gross revenues, reducing gradually to 1% for each dollar in gross revenues over \$50M.

Examples of Annual PEG Funding Amounts, Based on Formula:			
System Size (subs)	System GR/yr. (Based on \$600/sub)	Annual PEG Funding	Net PEG \$/sub/mo.
5,000	\$3,000,000	\$120,000	\$2.00
10,000	\$6,000,000	\$230,000	\$1.92
20,000	\$12,000,000	\$390,000	\$1.63
30,000	\$18,000,000	\$510,000	\$1.42
40,000	\$24,000,000	\$630,000	\$1.31
50,000	\$30,000,000	\$750,000	\$1.25
60,000	\$36,000,000	\$870,000	\$1.21
70,000	\$42,000,000	\$990,000	\$1.18
80,000	\$48,000,000	\$1,110,000	\$1.16
90,000	\$54,000,000	\$1,190,000	\$1.10
100,000	\$60,000,000	\$1,250,000	\$1.04
200,000	\$120,000,000	\$1,850,000	\$0.77
300,000	\$180,000,000	\$2,450,000	\$0.68
400,000	\$240,000,000	\$3,050,000	\$0.64
500,000	\$300,000,000	\$3,650,000	\$0.61
1,000,000	\$600,000,000	\$6,650,000	\$0.55

Channel Capacity

If we compare subscriber base as a representation of community size to PEG capacity, we can develop a sliding scale which provides the minimum number of channels a community generally needs for adequate PEG services. We can keep a fairly consistent amount of capacity per population from system to system, if we acknowledge the efficiencies of channel-time use and production facilities achieved at the top end.

Some current legislative language proposes four PEG channels as reasonable. Assuming that a 750 MHz video system with four analog channels normally would be appropriate capacity for median-sized system, we would be considering 24 MHz or 3.2% of that system. The number of channels offered subscribers on a system does not significantly decrease with the number of subscribers.

Based on general experience, we consider four PEG channels to be typical capacity for a subscriber base of about 35,000.

Scalability of Bandwidth The relative per-sub amount of financial support needed to operate PEG *decreases* as the system size increases. However, the amount of bandwidth necessary to serve community needs *increases* with the number of subscribers:

- A system of 10,000 subs may be served adequately with two or three PEG channels out of 72 analog channels, or about 4%.
- In Manhattan/New York City with 500,000+ subscribers, community needs were barely met with nine analog PEG channels of a 72 channel system at the time of franchise.

PEG Channel Formula (Based on Number of Cable System Subscribers):

Subscribers	Channels	% of Bandwidth
Under 10,000	2	1.6%
10,001-25,000	3	2.4%
25,001-50,000	4	3.2%
50,001-100,000	6	4.8%
100,001-250,000	8	6.2%
250,000 or more	10	8%

This sliding-scale provides a bell-curve in which the vast majority of systems would have four PEG channels. The needs of both smaller and larger communities are met by balanced, market-based tests.

A Word On Percentages Any channel capacity system needs protection from migration of video services to the information services silo. As technology moves forward, there will be market pressure to satisfy PEG requirements with fewer bandwidth resources by not passing along the advantages of innovation. This is often already the case. The number of PEG channels generally remains fixed at old levels even as digital technology provides ten times as many channels in the same space. The digital channels often involve new capabilities for commercial programmers not offered to community programmers.

Fixing PEG at a reasonable percentage of bandwidth based on current channel allotments eliminates this tendency and prevents PEG capacity from being *redefined* out of existence. More importantly, it eliminates regulatory language which might arbitrarily favor one use of technology over another.

- *The use of bandwidth percentages allows a community to align itself with the most current, innovative technology a new system provides while eliminating the need to ever redefine public interest capacity obligations. Within this framework, communities will be able to evolve resources which are comparable in basic function and accessibility to those of other system users for years to come.*

Conclusion We believe that this PEG funding and capacity system would simplify discussions of national franchising by taking two points of negotiation off the table. It speeds the ability of competitors to enter new markets. It protects a valued community resource. Further, it protects the right of our communities to determine the best local use of available resources.

PROPOSED AMENDMENTS REGARDING PUBLIC, EDUCATIONAL AND GOVERNMENTAL ACCESS

SECTION 1. PUBLIC, EDUCATIONAL AND GOVERNMENTAL ACCESS

(a) **FUNDING SUPPORT.** - In lieu of the public, educational and governmental access facilities and equipment obligations of Sections 611(b) and (c), 621(a)(4)(B), 621(b)(3)(D) and 624(b)(1) and (2)(A), a competitive video service provider shall be subject to the following:

(1) A local franchising authority shall require a competitive video service provider operating in its jurisdiction to pay the local franchising authority or its designee(s), in support of public, educational and governmental access services and facilities, the greater of either (A) a fee of up to the annual amount calculated pursuant to paragraph (a)(2) hereof, or (B) a per-subscriber fee equivalent to the value, on a per-subscriber basis, of any monetary grants, in-kind services, and facilities for public, educational and governmental access channels provided by any cable operator franchised by such local franchising authority pursuant to such cable operator's franchise with the franchising authority or pursuant to any separate agreement with the franchising authority or any other person.

(2) The annual amount that a local franchising authority shall require a competitive video service provide to pay under paragraph (a)(1)(A) hereof shall be calculated by applying the percentage derived under the formula set forth below to the competitive video service provider's gross revenues, as defined in this title:

4% times all gross revenues under \$5,000,000 annually, plus

3% times all gross revenues between \$5,000,000 and \$10,000,000 annually, plus

2% times all gross revenues between \$10,000,000 and \$50,000,000 annually, plus

1% times all gross revenues over \$50,000,000 annually.

(3) If the monetary grant and/or in-kind service and facilities obligations of a cable operator franchised by a local franchising authority within the jurisdiction where a competitive video service provider is providing service are subsequently changed as a result of cable franchise renewal pursuant to Section 626 or otherwise, and prior to such franchise renewal, the local franchising authority was imposing on the competitive video service provider the per-subscriber equivalent fee set forth in paragraph (a)(1)(B) hereof, then after such franchise renewal, the per-subscriber equivalent fee paid by the competitive video service provider shall be adjusted to be comparable, on a per-subscriber

basis, to the franchised cable operator's obligations under its renewed cable franchise.

(4) The payments required to be made by a competitive video service provider pursuant to paragraphs (a)(1) and (a) (3) hereof shall be made to the local franchising authority at the same time as the franchise fee payments required herein, and the local franchising authority shall have the same audit power with respect to such payments as it does with respect to the franchise fee payments.

(5) A local franchising authority may require a competitive video provider and a cable operator franchised in the local franchising authority's jurisdiction to supply the local franchising authority with information sufficient to calculate the per-subscriber equivalent fee allowed by paragraphs (a)(1)(B) and (a)(3) hereof. Such information shall be entitled to treatment as confidential and proprietary business information.

(6) The payments made by a competitive video service provider pursuant to paragraphs (a)(1) and (a)(3) hereof shall be used by a local franchising authority exclusively to support public, educational and governmental access channels, and such payments shall be treated as falling within Section 622(g)(2)(B).

(b) PEG CAPACITY -

(1) Any competitive video service provider shall provide, within each local franchise area, the greater of either (A) the number of channels for public, educational, and governmental access use that are carried by cable operators pursuant to section 611 in the area served pursuant to an unexpired (or extended if expired) franchise issued by a local franchising authority prior to January 1, 2006 or (B) the number of channels or channel capacity determined pursuant to paragraph (b)(2) hereof. For the purpose of determining public, educational, or governmental use, "channel" or "channel capacity" shall mean the bandwidth provided for public, educational, or governmental use that is delivered to subscribers in the franchise area. The channel capacity that is to be provided for public, educational, or governmental use must be capable of transmitting signals in any standard format and can be used to transmit video and audio signals only, or other information (including any secondary audio, text, digital information, high definition signals, or compressed video and audio signals).

(2) The minimum number of public, educational, and governmental access channels or channel capacity to be provided, within each local franchise area, shall be based on the total number of subscribers carried by all cable operators, including competitive video service providers as follows::

(A) two channels (1.6 percent of bandwidth) for any franchise area with 10,000 or fewer subscribers;

(B) three channels (2.4 percent of bandwidth) for any franchise area with 10,001 to 25,000 subscribers;

- (C) four channels (3.2 percent of bandwidth) for any franchise area with 25,001 to 50,000 subscribers;
- (D) six channels (4.8 percent of bandwidth) for any franchise area with 50,001 to 100,000 subscribers;
- (E) eight channels (6.2 percent of bandwidth) for any franchise area with 100,001 to 250,000 subscribers; and
- (F) ten channels (8 percent of bandwidth) for any franchise area with more than 250,000 subscribers.

SECTION 2. CONFORMING AMENDMENTS.

(a) **CABLE SERVICE.** Section 602(6) of the Federal Communication Act (47 U.S.C. § 522(6)) is amended by:

(1) inserting after “video programming **service**,” at the end of Section 602(A)(i) the following: “including interactive on-demand services,”; and

(2) inserting after “other programming service” at the end of Section 602(6)(B) the following: “, regardless of the technology or transmission protocol used to transmit, select, or interact with such video programming or other programming service.”

(b) **FRANCHISE FEE.** Section 622(g)(2) of the Federal Communications Act (47 U.S.C. § 542(g)(2)) is amended by:

(1) striking “in the case of any franchise in effect on the date of enactment of this title,” from subparagraph (B);

(2) striking subparagraph (C); and

(3) re-numbering subparagraphs (D) and (E) as subparagraphs (C) and (D).